

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANESSA JORDAN-ROWELL,

Plaintiff,

-against-

IRS,

Defendant.

1:23-CV-2155 (ALC)

ORDER OF SERVICE

ANDREW L. CARTER, JR., United States District Judge:

Plaintiff Janessa Jordan-Rowell, of New York, New York, who appears *pro se*, asserts claims against the Internal Revenue Service (“IRS”) challenging that agency’s denial of her requests for federal income tax refunds and seeking damages arising from those denials. The Court construes Plaintiff’s amended complaint as asserting claims under 26 U.S.C. §§ 7422 and 7433.

By order dated April 27, 2023, the court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”). For the following reasons, the Court dismisses Plaintiff’s claims against the IRS, and directs the Clerk of Court to add the United States of America as a defendant under Rule 21 of the Federal Rules of Civil Procedure. The Court directs service on the United States of America.

DISCUSSION

A. IRS

The proper defendant for claims under 26 U.S.C. §§ 7422 and 7433 is the United States of America. 26 U.S.C. §§ 7422(f)(1), 7433(a). The Court therefore dismisses Plaintiff’s claims against the IRS.

In light of Plaintiff's *pro se* status and clear intention to assert claims against the United States of America, however, the Court construes the amended complaint as asserting claims against the United States of America, and directs the Clerk of Court to amend the caption of this action to replace the IRS with the United States of America. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses the United States of America may wish to assert.

B. Service on the United States of America

Because Plaintiff has been granted permission to proceed IFP, she is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service on the United States of America through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for the United States of America. The Clerk of Court is also instructed to mark the box on the USM-285 form labeled “Check for service on U.S.A.,” issue a summons for the United States of America, and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon the United States of America.

If service is not performed on the United States of America within 90 days after the date the summons is issued, Plaintiff should request an extension of time for service. *See Meilleur v.*

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served a summons and the amended complaint until the Court reviewed the amended complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date that a summons is issued.

Strong, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if her address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Court directs the Clerk of Court to mail an information package to Plaintiff.

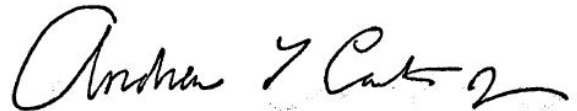
The Court dismisses Plaintiff's claims against the IRS.

The Court also directs the Clerk of Court to add the United States of America as a defendant. *See* Fed. R. Civ. P. 21.

The Court further directs the Clerk of Court to: (1) issue a summons for the United States of America; (2) complete a USM-285 form for the United States of America; (3) mark the box on the USM-285 form labeled "Check for service on U.S.A."; and (4) deliver all documents necessary to effect service on the United States of America to the U.S. Marshals Service.

SO ORDERED.

Dated: **May 4, 2023**
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

ANDREW L. CARTER, JR.
United States District Judge

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